

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4368

UNITED STATES OF AMERICA

v.

CALVIN J. NEZ,

Appellant

On Appeal From the United States District Court
for the Middle District of Pennsylvania
(07-cr-00368)

District Judge: Honorable James F. McClure, Jr.

Submitted Under Third Circuit LAR 34.1(a)
May 28, 2009

Before: FISHER, CHAGARES, and COWEN, Circuit Judges

(Filed: June 8, 2009)

OPINION OF THE COURT

CHAGARES, Circuit Judge.

Calvin Nez appeals from the District Court's judgment of sentence. We will affirm.

Nez was sentenced to a 200-month federal prison term for shooting a man in the chest after fleeing the scene of a robbery. While serving that term, Nez attacked a fellow inmate, stabbing him numerous times. Nez was convicted of assault based upon this conduct. The District Court imposed a 63-month prison term to run consecutively to the sentence he was already serving. Nez filed this appeal, arguing that the District Court's sentence was unreasonable.

The District Court had jurisdiction pursuant to 18 U.S.C. § 3231, and this Court has jurisdiction pursuant to 18 U.S.C. § 3742. This Court reviews the District Court's sentence for reasonableness, evaluating both its procedural and substantive underpinnings using a deferential abuse of discretion standard. Gall v. United States, 128 S. Ct. 586, 594 (2007).

Nez argues that the District Court's decision to impose a consecutive 63-month sentence was unreasonable. Specifically, he argues that the sentence should have been imposed to run concurrently (rather than consecutively) to the sentence he was already serving.

This argument is meritless. The transcript of the sentencing hearing reveals that the District Court used the correct methodology for determining Nez's sentence. The District Court analyzed the factors enumerated in 18 U.S.C. § 3553(a), announced its sentence based upon that analysis, and then reiterated that "[i]n determining the particular sentence to be imposed, the [District] Court considered all seven factors set forth in 18

United States Code, section 3553(a).” See Appendix (App.) 55-57.¹

The District Court did not abuse its discretion in holding that, in light of those factors, a consecutive sentence was necessary. For example, the offense of conviction (stabbing a fellow inmate) was heinous. Coupled with the offense that landed him in federal prison for 200 months in the first place, see Pre-Sentence Report ¶ 29; App. 54-55, it revealed him to be particularly violent. The District Court reasonably balanced these and other considerations in arriving at its sentence and, in so doing, determining that a concurrent prison term (rather than a consecutive one) would not have sufficed.

For the above reasons, we will affirm the District Court’s judgment of sentence.

¹ Nez complained that the District Court did not expressly state that it recognized that it had the ability to impose a concurrent sentence. However, no such statement is required. All that is required is consideration of the § 3553(a) factors, United States v. Velasquez, 304 F.3d 237, 241-42 (3d Cir. 2002), and that is precisely what the District Court did.